

**No. 05-18-00098-CR**

James Berkeley Harbin II	§	In the Court of Appeals	FILED IN
			5th COURT OF APPEALS
v.	§	for the Fifth District	DALLAS, TEXAS
			11/07/2018 10:04:06 AM
The State of Texas	§	of Texas at Dallas	LISA MATZ
			Clerk

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**STATE'S MOTION FOR EXTENSION OF TIME TO FILE BRIEF**

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The State of Texas, by and through the Criminal District Attorney of Dallas County, respectfully requests that the Court extend the time for filing the State's brief. In support of this motion, the State shows the following:

1.

A jury convicted Appellant of murder in 1991 and sentenced him to life in prison. The Court of Criminal Appeals granted Appellant's post-trial writ of habeas corpus in June 2015, granting Appellant a new punishment hearing. At the conclusion of the new punishment hearing conducted in December 2017, the jury sentenced Appellant to twenty-four years' confinement in the Institutional Division of the Texas Department of Criminal Justice. Appellant filed a motion for new trial, which the trial court overruled. The trial court certified Appellant's right of appeal, and he filed a timely notice of appeal.

2.

Appellant filed his brief on October 8, 2018. The State's brief is due on November 9, 2018. This is the State's first request for an extension of time. This Court has not set the case for submission.

3.

The undersigned counsel was assigned to this appeal on October 10, 2018. Counsel is a part-time Assistant District Attorney who works only two or three days per week. Since being assigned to this appeal, Counsel prepared and filed a response to the appellants' briefs in the following cases:

- *Smith v. State*, cause number 05-18-00491-CR, filed in this Court on October 9, 2018; and
- *Carr v. State*, cause number 05-18-00425-CR, filed in this Court on October 31, 2018.

Counsel's docket also includes preparing and filing a response to the appellant's brief in *Hall v. State*, cause numbers 05-18-00442—00443-CR, due in this Court on November 28, 2018. Furthermore, counsel has expended time editing appellate briefs for other Assistant District Attorneys and performing other duties required of her job such as providing trial support and participating in miscellaneous trial court hearings.

For all the foregoing reasons, counsel respectfully asks the Court to extend the deadline for filing the State's brief until December 9, 2018.

Respectfully submitted,

/s/ Marisa Elmore  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing motion was served on Lawrence B. Mitchell, counsel for Appellant, by electronic communication through eFileTexas.gov at judge.mitchell@gmail.com, on November 7, 2018.

/s/ Marisa Elmore  
Marisa Elmore